

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-208185

DATE: December 14, 1982

MATTER OF: Entitlement of Employee-Defendant to Court Leave

DIRECT: Employee who is summoned to county court for a traffic violation is not entitled to court leave as a witness under 5 U.S.C. 6322 in connection with his appearance in court as a defendant.

Mr. John J. Kominski, General Counsel of the Library of Congress (Library), has requested an advance decision as to whether an employee of the Library is entitled to court leave under 5 U.S.C. 6322 in connection with his appearance in court in Arlington County, Virginia, pursuant to a summons for a traffic violation. For the reasons set forth below, the employee is not entitled to court leave under 5 U.S.C. 6322 for his appearance in court as a defendant.

Section 6322 of title 5, United States Code, provides in pertinent part that an employee is entitled to leave, without loss of, or reduction in, pay, or leave to which he otherwise is entitled, when in response to a summons in connection with a judicial proceeding, he serves as a juror or as a witness on behalf of any party when the United States, the District of Columbia, or a state or local government is a party to the proceeding.

We have held that the authority of 5 U.S.C. 6322 to grant court leave to a Government employee summoned as a witness in certain proceedings does not extend to an employee who is the plaintiff in such action. See Matter of Pasake, 59 Comp. Gen. 290 (1980), and Matter of Sweeney, B-201602, April 1, 1981. We note that the above-cited cases involved discrimination actions against the employing agency under title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.). We further note that by Federal Personnel Manual Bulletin 630-38, August 4, 1980, the Office of Personnel Management has provided Federal agencies instructions consistent with the holding in Pasake.

We see no reason why the rule adopted in the Pasake and Sweeney cases should not be for application where the employee is a defendant in the court action concerned. Neither the language of 5 U.S.C. 6322 nor the legislative history indicate that court leave is available to an employee who is a party in the court action for which he is summoned and in which the Government of the United States is not involved.

B-208185

Accordingly, we do not consider a defendant in a court case to be entitled to court leave as a witness under 5 U.S.C. 6322. Thus, the employee concerned is not entitled to court leave in connection with his appearance in court as a result of his summons for a traffic violation.

Milton J. Fowler
for Comptroller General
of the United States